BARRY LARBALESTIER Q.C. (IN THE MATTER OF)

HIGH COURT MALAYA, PENANG
MOHD. DZAIDDIN J
[ORIGINATING MOTION NO. 32-43-87]
5 JUNE 1987

LEGAL PROFESSION: *Admission - Admission of a Commonwealth legal practitioner - Applicant a Queen's Counsel in Australia - Whether could be admitted and enrolled as an advocate & solicitor of High Court Malaya to appear as co-counsel.*

This was an application under s. 18(1) of the Legal Profession Act 1976 for a Queen's Counsel to be admitted and enrolled as an advocate & solicitor of the High Court of Malaya to appear as co-Counsel with Mr. Karpal Singh.

Held:
The fact that the applicant is intimately acquainted with the history of the accused persons and is able to obtain evidence is not "special qualifications and experience". Therefore the applicant has not satisfied the requirements under s. 18(1)(a) of the Act.

[Application dismissed.]

Case referred to:
Re S.K. Lee [1971] 2 MLJ 40

Legislation referred to:
Dangerous Drugs Act 1952, s. 39B
Legal Profession Act 1976, s. 18(1), (1)(a)

For the applicant - Karpal Singh; M/s. Karpal Singh & Co.
For the attorney-general - Mohd. Bazain bin Idris, DPP
For the Bar Council & Penang Bar Committee - R.J. Manecksha; M/s. Lim Kean Siew

JUDGMENT

Mohd. Dzaiddin J:

The applicant who is a Queen's Counsel practising in the State of New South Wales, Victoria, and the Australian Capital Territory seeks to be admitted and enrolled as an advocate and solicitor of the High Court of Malaya to appear as co-Counsel with Mr. Karpal Singh, an advocate and solicitor, under s. 18(1) of the Legal Profession Act 1976.

Section 18(1) reads as follows:

> Notwithstanding anything contained in this Act, the Court may, for the purpose of any one case and subject to the following subsections, admit to practice as an advocate and solicitor any person who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court and no person shall be admitted to practice as an advocate and solicitor under this subsection unless -
>
> (a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and
>
> (b) he has been instructed by an advocate and solicitor in Malaysia.

Under this section, it is clear that the applicant must satisfy the following requirements:

(1) that if he had in fact been a citizen of, or a permanent resident in, Malaysia "he would be eligible to be admitted as an advocate and solicitor of the High Court";

(2) that for the purpose of this particular cases, he possesses "special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia"; and

(3) that he has been instructed by an advocate and solicitor in Malaysia.

Upon reading the affidavit of Mr. Karpal Singh affirmed on 13 May 1987 supporting the application, I do not think there is any dispute whatever regarding requirements (1) and (3) above. Therefore, it is only on ground (2) which receives objections from the Attorney General, the Bar Council and the Penang Bar committee. In my opinion, the onus is on the applicant to show that he has special qualifications or experience of a nature not available to local lawyers. Sharma J in *Re S.K. Lee* [1971] 2 MLJ 40 has interpreted the words "special qualifications" to mean an accomplishment of an exceptional degree or such that excels in some ways the measures of accomplishment reached by the advocates and solicitors of Malaysia. "Instances would be of persons who specialise, for example, in income tax law, or trade marks, divorce practice, shipping law, etc. and have achieved such heights in the exercise of their profession that they stand out as great luminaries in the firmament of law." I think what the law intended to mean is that special qualification or experience are required to be of a quality and type which cannot be had amongst the advocates and solicitors in Malaysia. In the words of Sharma J, "the applicant may have special qualifications or experience but that alone does not seem to be sufficient under the statute. He has to go further and satisfy the Court that the special qualifications he possesses or the experience he professes to have are comparatively of such a type and character that no advocate and solicitor practising in Malaysia can be said to possess or equal that high degree of accomplishment which has been acquired or exhibited by the applicant."

Turning now to the affidavit evidence tending to show the requirements of s. 18(1)(a) have been complied with, it is not disputed that the applicant is a Queen's Counsel whose expertise lies in criminal law. He received his "silk" on October 1982 and has had ad hoc admission in Singapore and Fiji. According to Mr. Karpal Singh he has experience in drug-related matters. In this particular case, it is claimed that he is intimately acquainted with the history of the two accused persons who have spent their lives in the Sydney area. It does appear to me that in anticipation of his admission the applicant has carried out research into the background of the accused persons during the period of detention by travelling to New Zealand to confer with lawyers and doctors who are acquainted with the accused. In addition, it is also deposed that the applicant has access to numerous people who can provide affidavit evidence in relation to the characters and the reputation of the accused. Hence, in the opinion of Mr. Karpal Singh, the applicant has special qualifications and experience and also the facilities which he possesses in regard to the accessibility of witnesses in Australia are not available in Penang. For these reasons, Counsel prays that this application be granted.

In this case, the two accused persons, mother and son, face a charge under s. 39B Dangerous Drugs Act 1952 which carries upon conviction mandatory death sentence. The facts that the applicant is allegedly to be intimately acquainted with the history of the accused persons and is able to obtain evidence on their characters and reputation, which is not available to lawyers in Malaysia do not, in my opinion, come within the meaning of "special qualifications or experience" under the section. In the field of criminal law and in particular, drug offences, I am sure our lawyers can handle the cases equally well, and if not, better than foreign

lawyers. Generally, these cases are based on facts and even if there may be points of law involved, they are not so difficult or intricate to require the expertise of a foreign lawyer. Indeed, in this particular case, I am confident Mr. Karpal Singh will be the best person to conduct the defence on behalf of his clients.

Therefore, having regard to the facts as deposed in Mr. Karpal's affidavit, in my judgment, the applicant has not satisfied the requirements under s. 18(1)(a) of the Act. This application is dismissed.

Also found at [1987] 2 CLJ 34